

9In Reply Refer To: **FOIA Request 21-06268-F**

11/19/2021

Ryan Mulvey  
Americans For Prosperity Foundation  
1310 N. Courthouse Rd  
Arlington, VA, 22201

Dear Mr. Mulvey:

This letter, including its referenced documents, is further non-email production in response to your May 27, 2021 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the Department of Veterans Affairs (VA) Veterans Health Administration (VHA) Central Office FOIA Office, requesting the following records:

1. "Records reflecting aggregate totals and percentages for pending and completed appointment wait times and related data, as previously disclosed in summary form at the Veterans Health Administration ("VHA") "Patient Access Data" portal, <https://www.va.gov/health/accessaudit.asp>. The time period for this item is March 1, 2021 to the present records that reflect the requested data on a monthly basis (e.g., total number of scheduled appointments for each month of the requested time period) or per reporting period. If month-by-month or period-by-period data is unavailable, please provide the requested data in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.
2. All records concerning the VHA's decision to eliminate proactive disclosure of patient access in nation-wide summary form, as previously available at the "Patient Access Data" portal, <https://www.va.gov/health/access-audit.asp>. The time period for this item of the request is January 1, 2021 to the present.
3. All guidance documents, legal opinions, administrative orders, directives, or policy statements issued by the VA concerning any of the following topics:
  - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
  - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
  - c. Limiting or dissuading veterans from using community care; and
  - d. The impact of the COVID-19 pandemic on administration of the VCCP.

4. All records reflecting communications between or amongst any of the following entities, offices, or components concerning any of the topics listed in Item Three: (a) VHA, (b) VA Office of the Secretary, (c) VA Office of General Counsel, (d) White House Office of Management and Budget, (e) White House Domestic Policy Council, or (f) Office of the White House Counsel.
5. All records concerning congressional requests or inquiries pertaining to any of the topics listed in Item Three. This item includes, but is not limited to, records originating with any Member or entity of Congress, formal agency responses thereto, and internal VA communications regarding the congressional request or inquiry. Searches should be conducted, at a minimum, within the VHA, VA Office of the Secretary, VA Office of General Counsel, and VA Office of Public and Intergovernmental Affairs.”

## Requests to VA Medical Centers:

Additionally, also on or around May 28, 2021; fourteen (14) VA Medical Center FOIA Offices received the following requests:

“Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), AFPP hereby requests access to the following categories of records concerning operation of the (previously indicated) VA Medical Center hospital. The time period for all items of this request is January 1, 2020 to the present. Please note: to the extent an item of this request seeks data (i.e., Items 1–7 and 9), please provide records reflecting that data on a monthly basis (e.g., total number of scheduled appointments for each month of the requested time period). If month-by-month data is unavailable, please provide the requested data in the aggregate or in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.

1. Records reflecting the total number of appointments scheduled.
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
  - a. By a VA health care provider; and
  - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
  - a. Within 20 days of a patient’s date of request; and
  - b. Over 20 days of a patient’s date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
  - a. Within 28 days of a patient’s date of request; and
  - b. Over 28 days of a patient’s date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.

7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:
  - a. Eligible for community care under the VCCP;
  - b. Who have elected to receive community care under the VCCP; and
  - c. Who have declined to receive community care under the VCCP.
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the (previously indicated) VA Medical Center hospital and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
  - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
  - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
  - c. Limiting or dissuading veterans from using community care; and
  - d. The impact of the COVID-19 pandemic on administration of the VCCP."

### VA Medical Center Request Locations and FOIA Tracking:

The ten (10) categories of requests sent on or around May 28, 2021, referenced above, were sent to the following fourteen (14) VA Medical Center FOIA Offices:

1. Phoenix VA Healthcare System (FOIA tracking number- 21-06409-F)
2. Northern Arizona VA Healthcare System (Prescott, AZ, FOIA tracking number- 21-06306-F)
3. Southern Arizona VA Healthcare System (Tucson, AZ, FOIA tracking number- 21-06346-F)
4. C.W. Bill Young VA Medical Center (Bay Pines, FL, FOIA tracking number – 21-06280-F)
5. Miami VA Healthcare System (Miami, FL, FOIA tracking number 21-06276-F)
6. North Florida/South Georgia Veterans Health System (Gainesville, FL, FOIA tracking number 21-06322-F)
7. Orlando VA Medical Center (Orlando, FL, FOIA tracking number 21-06304-F)
8. James A. Haley Veterans Hospital (Tampa, FL, FOIA tracking number 21-06343-F)
9. West Palm Beach VA Medical Center (West Palm Beach, FL, FOIA tracking number 21-06421-F)

10. VA Montana Healthcare System (Fort Harrison, MT, FOIA tracking number 21-06305-F)
11. Beckley VA Medical Center (Beckley, WV, FOIA tracking number 21-08983-F)
12. Hershel Williams VA Medical Center (Huntington, WV, FOIA tracking number 21-07448-F)
13. Louis A. Johnson VA Medical Center (Clarksburg, WV, FOIA tracking number 21-06281-F)
14. Martinsburg VA Medical Center (Martinsburg, WV, FOIA tracking number 21-06331-F).

### Consolidation:

Per communication in or about September 2021, the Veterans Health Administration through the Assistant United States Attorney, notified the Plaintiff that the Veterans Health Administration consolidated all the FOIA requests into one request (tracking number 21-06268-F, appearing at the top of this letter) for ease of use and tracking post litigation filing. Any further communication will be under FOIA tracking number 21-06268-F.

### Fee Waiver and Requester Category:

With your requests on and around May 28, 2021; you requested a fee waiver writing: "the requested records will unquestionably shed light on the "operations or activities of the government;" additionally, you wrote "There is a strong public interest in ensuring that veterans receive optimal services, and the requested records have the potential to significantly contribute to public understanding of the VA's operations." AFPP also wrote that "AFPP intends to educate the public with the results of this request. It has the intent and ability to make those results available to a reasonably broad public audience through various media." Additionally, you requested categorization under "News Media."

Based on the information you have provided (as outlined above) in your request, I have categorized this request under "news media" and additionally, the request for fee waiver (on this specific request) is granted. Please be advised that we reserve the right to assess fees as appropriate under the FOIA on any future FOIA requests.

### Clarification:

Per the meeting with AFPP Counsel on August 17, 2021, follow up was requested on the Northern Arizona VA Medical Center (Prescott, AZ) previously received FOIA request (21-06306-F.) Specifically, counsel for AFPP noted there was a discrepancy between the number of pages/files that were received versus the number of documents that were referenced in the response letter. The VHA FOIA Office confirmed with the Northern Arizona VA Medical Center FOIA Office that there was an error on the number of documents listed on the IAD (6 documents, 123 pages). The correct number of documents are one (1) PDF that is ninety-eight (98) pages and two

Excel workbooks that were sent/received with Northern Arizona VA Medical Center's previously processed FOIA request (under 21-06306-F). To restate, all of the responsive records (1 pdf totaling 98 pages and 2 Excel workbooks) were sent, there are no additional documents erroneously missed in the response.

Additionally, it was noted in the meeting with AFPP Counsel on August 17, 2021, that there was concern over a portion of the Office of Community Care Field Guidebook being provided instead of an entire guidebook. A copy of the Office of Community Care Field Guidebook is provided in the response outlined below.

## Search:

As there are many parts of your request, there are several offices that searched for the records you requested. Please note that, as agreed by the parties and communicated to the Court, this production does not include the results of an email search, which will be conducted at a later time, subsequent to further discussions by the parties about the parameters of such a search. All redactions to the responsive documents in this production are marked with the applicable FOIA exemption. Where there is no exemption included on blocked, blurred, whited or blacked portions of the documents, you should assume that the document was recovered and provided in that state. The responses are outlined below in line with the items of your request for ease of use—

Request originally received by the VHA FOIA Office:

1. "Records reflecting aggregate totals and percentages for pending and completed appointment wait times and related data, as previously disclosed in summary form at the Veterans Health Administration ("VHA") "Patient Access Data" portal, <https://www.va.gov/health/accessaudit.asp>. The time period for this item is March 1, 2021 to the present (August 2, 2021) records that reflect the requested data on a monthly basis (e.g., total number of scheduled appointments for each month of the requested time period) or per reporting period. If month-by-month or period-by-period data is unavailable, please provide the requested data in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format."
  - The Office of Veterans Access to Care (OVAC) Program Office searched for data for this item in the Corporate Data Warehouse.
  - VA is providing all available responsive data covering the time period from March 1, 2021 through March 25, 2021. The associated Excel workbook named "Patient Audit Site Access Data –3.1-15.21" contains this information, which is being provided in its entirety with no portions withheld.
  - VA is continually working to enhance data methodology to most accurately represent the moments in the care journey that matter to Veterans, and as of March 25, 2021, VA's data scientists ceased creation of the summary form data that was previously provided. Information as previously

presented in the "Patient Access Data Portal" was neither created nor stored past that date.

2. "All records concerning the VHA's decision to eliminate proactive disclosure of patient access in nation-wide summary form, as previously available at the "Patient Access Data" portal, <https://www.va.gov/health/access-audit.asp>. The time period for this item of the request is January 1, 2021 to the present."
  - The Office of Veterans Access to Care (OVAC) Program Office searched their local drives and outlook email accounts for the key terms: appointments and public data. At the end of their search two (2) documents totaling one hundred and sixteen pages (116) were found to be responsive. The responsive documents include:
    - "Hold of Tomorrow 3-25-21: Green Light Data Release 162"
    - "Data Release 162."
  - The VA has not eliminated proactive disclosure of patient access data in nation-wide summary form; however, as noted above, we have updated how VA releases Access data. As of March 25, 2021, VA is no longer updating the access audit website. Instead, go to [accessstocare.va.gov](https://accessstocare.va.gov) for average wait times for completed appointments within a number of health care services. Pending appointments is no longer published on the access audit website because it is not the most accurate representation of the wait time experience.
3. All guidance documents, legal opinions, administrative orders, directives, or policy statements issued by the VA concerning any of the following topics:
  - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
  - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
  - c. Limiting or dissuading veterans from using community care; and
  - d. The impact of the COVID-19 pandemic on administration of the VCCP.
  - The Office of Veterans Access to Care (OVAC) searched local databases and associated Share Point sites using the key terms of "VCCP," "access standards," "wait times," "date of request," "patient preferred date," and "clinically indicated date." The Office of Community Care (OCC) searched for responsive records OCC Share Point sites using the key terms of "VCCP," "access standards," "wait times," "date of request," "patient preferred date," and "clinically indicated date." At the end of their search, nineteen documents (19) totaling one thousand, three hundred and eighty-eight (1388) pages

were found to be responsive. The responsive documents include the following:

- "050820190 Stop Codes Used for 20 Day Wait Time Access Standard.pdf."
- "Attachment C – Outpatient Appointments Scheduling Management Moving Forward Post COVID\_080220.pdf"
- "CC Eligibility Scheduler Reference Sheet- Final – 11-02-2020.pdf."
- "COVID – 19 – CC Eligibility Scheduler Reference Sheet – Final\_ 11-02-2020.pdf."
- "FY20\_Level 1\_ Scheduling Auditor Training Final.pptx.pdf."
- "FY21\_Level 2\_ Scheduling Auditor Training Final 6.4.2021.pptx.pdf."
- "Guidance on Discussions of Veteran Eligibility for Community Care.pdf"
- "National Audit Findings Reference Sheet – Final\_11-02-2020 V2.pdf"
- "National Standardized Scheduling Audit Guidebook – FINAL – Revised – 06.8.21V1.pdf"
- "Outpatient Appointment Scheduling Management Moving Forward Post COVID19 Memorandum.pdf"
- "Outpatient COVID-19 Related Appointment Scheduling Management VHA Clinical Services Expansion of In-Person Care Delivery\_Final\_.pdf"
- "Referral Coordination Initiative Guidebook.pdf" dated September 28, 2021
- "Referral Coordination Initiative Guidebook.pdf" dated November 03, 2021. It is noted that this is an updated version of the guidebook that was previously released. The Referral Coordination Initiative guidebook is a continuously updated document used by Medical Centers and Veterans Integrated Service Networks (VISNs) to provide most up-to-date information on implementation."
- "Office of Community Care Field Guidebook (FGB). It is noted that this guidebook is continuously updated to provide the most up-to-date information on this program."
- "7.7.20 Attachment A - Outpatient Appointment Scheduling Management Moving Forward Post"
- "7.7.20 Attachment B - Outpatient Appointment Scheduling Management Moving Forward Post"
- "7.7.20 Attachment C - Outpatient Appointment Scheduling Management Moving Forward Post"
- "7.7.20 Outpatient Appt Scheduling Management MFP COVID 19"
- "09152020 -- Changes to Consult Referral Management during COVID-19"

4. All records reflecting communications between or amongst any of the following entities, offices, or components concerning any of the topics listed in Item Three: (a) VHA, (b) VA Office of the Secretary, (c) VA Office of General Counsel, (d) White House Office of Management and Budget, (e) White House Domestic Policy Council, or (f) Office of the White House Counsel.
  - It is noted, per discussion held with AFPF representation and the VHA on August 16, 2021, further discussion and evaluation is needed from both parties surrounding the parameters of the email search for this item. As such, a response to this item is not provided at this time as further deliberation is required.
5. All records concerning congressional requests or inquiries pertaining to any of the topics listed in Item Three. This item includes, but is not limited to, records originating with any Member or entity of Congress, formal agency responses thereto, and internal VA communications regarding the congressional request or inquiry. Searches should be conducted, at a minimum, within the VHA, VA Office of the Secretary, VA Office of General Counsel, and VA Office of Public and Intergovernmental Affairs.”
  - The Office of the Public and Intergovernmental Affairs, The Office of General Counsel, Information & Administrative Law Group and the Office of Congressional Legislative Affairs Office advised that the VA’s Office of the Office of Executive Secretary maintains the agency’s official congressional correspondence (requests/inquiries etc.) in the “VIEWS” database.
  - The Office of Executive Secretary searched the “VIEWS” database for records responsive to this request. The “VIEWS” database is the VA’s official system for all congressional inquiries, correspondence, requests for information and briefings. The search was conducted from January 01, 2020 through August 2, 2021 using the search term of “VCCP.” At the end of the search, thirty-nine documents (39) totaling one hundred and seventy-seven (177) pages were found responsive to your request.
  - The responsive documents include the following:
    - “Veterans Community Care Program (VCCP) Care Coordination for Breast Cancer Screening Audit, Draft Audit Report – Management Response Template.”
    - “Veterans Community Care Program (VCCP) Care Coordination for Breast Cancer Screening Audit, Final Report.”
    - Concurrence and Summary Sheets.
    - Email communication regarding Veterans Community Care Program (VCCP) Care Coordination for Breast Cancer Screening Audit Reports.
    - Letter from Senator Kelly Loeffler dated October 14, 2020.

- Email communication regarding response Senator Kelly Loeffler letter dated October 14, 2010.
- Response letter to Senator Kelly Loeffler dated November 13, 2020.
- Correspondence regarding VA Notice on Veterans Community Care Program.
- Copy of VHA Notice 2021-19, Veterans Community Care Program, dated October 6, 2021.
- VIEWS Number 03911518 Executive Summary, dated November 18, 2020.
- It is noted that additional correspondence (emails) may be discovered responsive to this item once email productions commence.

As well as the request(s) originally received by the fourteen (14) VA Medical Centers:

“Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), AFPP hereby requests access to the following categories of records concerning operation of the (previously indicated) VA Medical Center hospital. The time period for all items of this request is January 1, 2020 to present (May 28, 2021). Please note: to the extent an item of this request seeks data (i.e., Items 1–7 and 9), please provide records reflecting that data on a monthly basis (e.g., total number of scheduled appointments for each month of the requested time period). If month-by-month data is unavailable, please provide the requested data in the aggregate or in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.”

1. Records reflecting the total number of appointments scheduled.

- OVAC performed a data extraction for the time period of January 1, 2020 and May 28, 2021 in the VHA Support Service Center (VSSC) Appointment cube. At the end of their search an Excel workbook named “Appointment Data, 14 VA Medical Center Sites” was provided. This information is provided in its entirety, no portions were withheld.
- Of note, OVAC reviewed all data released by individual sites and recognizes that there may be differences in the data provided previously versus the data provided in this FOIA response. The differences in data are due to variable interpretation of Plaintiff’s data request between the local and national levels and subsequent data parameters.
- Additionally, OVAC is also providing the following data definitions to assist with interpreting and reading the provided data:

Data	Data Source	Fields Used	Measure	Description
1. Number of Appointments Scheduled between 01/01/20-05/28/21	Completed and Cancelled Appointments	Appointment Made Date	Appointments	Number of appointments that were scheduled between 01/01/2020-05/28/2021. These appointments could have been completed, cancelled or currently still scheduled.
2. Number of Appointments Completed between 01/01/20 - 05/28/21	Completed and Cancelled Appointments	Appointment Date	Appointments	Number of appointments that were completed between 01/01/2020- 05/28/2021. These could have been scheduled prior to or during this time period.
3a. Number of Appointments Cancelled by a VA Provider between 01/01/20-05/28/21	Completed and Cancelled Appointments	Appointment Date	Cancelled by Clinic Indicated	Number of appointments that were cancelled between 01/01/2020 and 05/28/2021. These appointments are notated as having been cancelled by the clinic.
3b. Number of Appointments Cancelled by a Patient between 01/01/20-05/28/21	Completed and Cancelled Appointments	Appointment Date	Cancelled by Patient Indicated	Number of appointments that were cancelled between 01/01/2020 and 05/28/2021. These appointments are notated as having been cancelled by the patient. They do not include no shows.
4a/b/c. Number and Percentage of Appointments Scheduled between 01/01/20 - 05/28/21 for Primary Care Mental Health and Non-institutionalized Care based	Completed and Cancelled Appointments	Appointment made date, CPM clinic group included Primary Care, MH and for NIC only stop codes 170-178	Appointments, Cancelled - Cancelled by Clinic, Cancelled - Cancelled by Patient, Completed - All - Appointments, Completed - All - PID - GT 20 Days, Pending - All - Appointments and Pending - All - PID - GT 20 Days by Facility District (Appointment Location) on rows	Number of completed and current pending appointments for both new/established patients with a made date between 01/01/20-05/28/20.

patient request			sub-setted by combined elements of Appointment Made Date and Primary Care, Mental Health, and then stop codes (170-178)	
5a/b. Number and Percentage of Appointments Scheduled between 01/01/20 - 05/28/21 for Specialty Care	Completed and Cancelled Appointments	Appointment made date, CPM clinic group included Specialty Care and all other	Appointments, Cancelled - Cancelled by Clinic, Cancelled - Cancelled by Patient, Completed - All - Appointments, Completed - All - PID - GT 20 Days, Pending - All - Appointments and Pending - All - PID - GT 20 Days by Facility District (Appointment Location) on rows sub-setted by combined elements of Appointment Made Date and specialty Care and All Others	Number of completed and current pending appointments for both new/established patients with a made date between 01/01/20-05/28/20.

2. Records reflecting the total number of appointments completed.
  - The Office of Veterans Access to Care performed a data extraction for the time period of January 1, 2020 through May 28, 2021 in the VSSC Appointment cube. At the end of their search an Excel workbook named "Appointment Data, 14 VA Medical Center Sites" was provided. This information is provided in its entirety, no portions were withheld.
  - Of note, the Office of Veterans Access to Care reviewed all data released by individual sites and recognizes that there may be differences in the data provided previously versus the data provided in this FOIA response. The differences in data are due to variable interpretation of Plaintiff's data request and subsequent data parameters.
3. Records reflecting the total number of appointments cancelled:
  - a. By a VA health care provider; and
  - b. By a patient.

- OVAC performed a data extraction for the time period of January 1, 2020 through May 28, 2021 in the VSSC Appointment cube. At the end of their search an Excel workbook named "Appointment Data, 14 VA Medical Center Sites" was provided. This information is provided in its entirety, no portions were withheld.
  - Of note, OVAC reviewed all data released by individual sites and recognizes that there may be differences in the data provided previously versus the data provided in this FOIA response. The differences in data are due to variable interpretation of Plaintiff's data request and subsequent data parameters.
- 4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
  - a. Within 20 days of a patient's date of request; and
  - b. Over 20 days of a patient's date of request.
    - OVAC performed a data extraction for the time period of January 1, 2020 and May 28, 2021 in the VSSC Appointment cube. At the end of their search an Excel workbook named "Appointment Data, 14 VA Medical Center Sites" was provided. This information is provided in its entirety, no portions were withheld.
    - Of note, OVAC reviewed all data released by individual sites and recognizes that there may be differences in the data provided previously versus the data provided in this FOIA response. The differences in data are due to variable interpretation of Plaintiff's data request and subsequent data parameters.
- 5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
  - a. Within 28 days of a patient's date of request; and
  - b. Over 28 days of a patient's date of request.
    - OVAC performed a data extraction for the time period of January 1, 2020 and May 28, 2021 in the VSSC Appointment cube. At the end of their search an Excel workbook named "Appointment Data, 14 VA Medical Center Sites" was provided. This information is provided in its entirety, no portions were withheld.
    - Of note, OVAC reviewed all data released by individual sites and recognizes that there may be differences in the data provided previously versus the data provided in this FOIA response. The differences in data are due to variable interpretation of Plaintiff's data request and subsequent data parameters.
- 6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
  - OVAC searched for records responsive to their request. OVAC searched in local databases and the OVAC SharePoint site using the key terms of

“opt out” and “opt in.” At the end of their search the agency is providing a no records response as (provide explanation here if needed. i.e. the agency does not maintain the data in this format/variables etc.)

- OCC Informatics and Data Analytics conducted a search of the VA Corporate Data Warehouse using the terms “opt out” and “opt in.” At the end of their search records were not maintained in a comprehensive, therefore data requested is not maintained, this results in a no records response.
7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
- OVAC searched for records responsive to their request. OVAC searched in local databases and the OVAC SharePoint site using the key terms of “opt out.” At the end of their search the agency is providing a no records response as (provide explanation here if needed. i.e. the agency does not maintain the data in this format/variables etc.)
  - OCC Informatics and Data Analytics conducted a search of the VA Corporate Data Warehouse using the terms “opt out” and “opt in.” At the end of their search records were not maintained in a comprehensive, therefore data requested is not maintained, this results in a no records response.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
- OVAC searched for records responsive to their request. OVAC searched in local databases and (enter search perimeters here (i.e. SharePoint etc.) using the key terms of (enter key terms here). At the end of their search, thirteen documents (13) totaling (VHA FOIA add page count) were found to be responsive. The responsive documents include the following:
    - “050820190 Stop Codes Used for 20 Day Wait Time Access Standard.pdf.”
    - “Attachment C – Outpatient Appointments Scheduling Management Moving Forward Post COVID\_080220.pdf”
    - “CC Eligibility Scheduler Reference Sheet- Final – 11-02-2020.pdf.”
    - “COVID – 19 – CC Eligibility Scheduler Reference Sheet – Final\_11-02-2020.pdf.”
    - “FY20\_Level 1\_ Scheduling Auditor Training Final.pptx.pdf.”
    - “FY21\_Level 2\_ Scheduling Auditor Training Final 6.4.2021.pptx.pdf.”
    - “Guidance on Discussions of Veteran Eligibility for Community Care.pdf”

- “National Audit Findings Reference Sheet – Final\_11-02-2020 V2.pdf”
- “National Standardized Scheduling Audit Guidebook – FINAL – Revised – 06.8.21V1.pdf”
- “Outpatient Appointment Scheduling Management Moving Forward Post COVID19 Memorandum.pdf”
- “Outpatient COVID-19 Related Appointment Scheduling Management VHA Clinical Services Expansion of In-Person Care Delivery\_Final\_.pdf”
- “Referral Coordination Initiative Guidebook.pdf” dated September 28, 2021
- “Referral Coordination Initiative Guidebook.pdf” dated November 03, 2021. The Referral Coordination Initiative guidebook is a continuously updated document used by medical centers and Veterans Integrated Service Networks (VISNs) to provide most up-to-date information on implementation.
- “7.7.20 Attachment A - Outpatient Appointment Scheduling Management Moving Forward Post”
- “7.7.20 Attachment B - Outpatient Appointment Scheduling Management Moving Forward Post”
- “7.7.20 Attachment C - Outpatient Appointment Scheduling Management Moving Forward Post”
- “7.7.20 Outpatient Appt Scheduling Management MFP COVID 19”
- “09152020 -- Changes to Consult Referral Management during COVID-19”

9. Records reflecting the total number and percentage of patients:

- a. Eligible for community care under the VCCP;
  - OCC searched for responsive records in DST in the Corporate Data Warehouse, IDA, no comprehensive records were located, complete data sets were not available, therefore we are providing a no records response. VA’s primary tool for documenting Veterans’ eligibility for community care is the Decision Support Tool. During the implementation planning phase, VA decided to make the tool optional to reduce administrative burden for clinical staff. Due to its optional use, VHA does not have full records of all Veterans eligible for community care. Additionally, some of the community care eligibilities such as BMI and wait time are not static and subject to change for each episode of care.
- b. Who have elected to receive community care under the VCCP; and
  - The Office of Community Care (OCC), Informatics and Data Analytics searched the VSSC Referrals Cube. Veterans who elected to receive community care under the VCCP were provided a community care authorization. VA reviewed data from all of its

authorizing systems to determine a count of distinct Veterans who were provided an authorization between Jan 1, 2020 to May 28, 2021. Responsive records are provided on the enclosed "Appointment Data, 14 VA Medical Center Sites" Excel workbook on tab 9b.

- It is noted- that, for Veterans who elected to receive community care under the VCCP, the data is based on VCCP authorizations, as authorizations indicate that a Veteran, at one point, chose to receive community care. This is limited to referrals created between Jan 1, 2020 to May 28, 2021. The data is sourced from VSSC Referrals Cube.
- Additionally, the referrals cube has a unique identifier search function. Unique Veterans are established by identifying a distinct social security number (SSN) and only using each SSN one time. Unique Veteran count includes one episode of care; Veterans may have more than one referral or episode of care.

c. Who have declined to receive community care under the VCCP.

- OCC searched for responsive records in DST in the Corporate Data Warehouse, IDA, no comprehensive records were located, complete data sets were not available. VA's primary tool for documenting Veterans' eligibility for community care is the Decision Support Tool, if it is used by the VA medical provider. During the implementation planning phase, VA decided to make the tool optional to reduce administrative burden for clinical staff. Due to its optional use, VHA does not have full records of all Veterans eligible for community care. Additionally, some of the community care eligibilities, such as BMI and wait time, are not static and subject to change for each episode of care.

10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the (previously indicated) VA Medical Center and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:

- Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
- The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
- Limiting or dissuading veterans from using community care; and
- The impact of the COVID-19 pandemic on administration of the VCCP."

- It is noted that this item is the same as requested item number three (3) of the request originally received by the VHA FOIA Office as outlined above in this letter. As such, please refer to item number three (3) for response and records.

## Determination:

My review of the documents revealed that they contained information that falls within the disclosure protections of: FOIA Exemption 3, 5 U.S.C. § 552 (b)(3) in conjunction with U.S.C. § 5705 (b)(3); Exemption 5, 5 U.S.C. § 552(b)(5); and Exemption 6, 5 U.S.C. § 552(b)(6).

FOIA Exemption 6 permits VA to withhold a document or redact information contained within a document if disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. Specifically, the information I am redacting, as indicated on the enclosed documents, under FOIA Exemption 6 consists of: employee names (non-senior executive service employees), employee titles (non-senior executive service employees), email addresses, employee phone numbers, employee on duty pager number, images of signatures, images of VA employee and patient, non-VA employee names, non-VA employee titles, non-VA employee addresses, non-VA employee phone numbers, non-VA employee email addresses, non-VA employee room numbers, non-VA employee DEA and NPI numbers, private company names, addresses, email addresses and phone numbers as I find that the individuals associated with this information have a personal privacy interest in it that clearly outweighs the public interest in it. Furthermore, I find no significant contribution to the public's understanding of the operations or activities of the government that would be served by revealing the foregoing information.

Additionally, I have concluded portions of the records are also protected under Exemption 3.

FOIA Exemption 3, 5 U.S.C. § 552 (b)(3), specifically exempts from disclosure all information that another Federal statute protects from disclosure under FOIA. The applicable statute is 38 U.S.C. § 5701, which prohibits the disclosure of all files, reports, records, and other documents and papers that pertain to any claim filed under any laws administered by VA, as well as the names and home addresses of present or former members of the Armed Forces and their dependents (which includes VA beneficiaries and applicants for VA benefits).

Specifically, the information I am withholding, as indicated on the enclosed documents, under FOIA Exemption 3 consists of: Veteran names, Veteran personal/home addresses, Veteran SSNs, Veteran dates of birth, Veteran personal phone numbers, Veteran gender, Veteran age, Veteran/patient identification numbers and Veteran health information. Consequently, I am denying your request for this information under FOIA Exemption 3, 5 U.S.C. § 552 (b)(3) and FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

Furthermore, 5 U.S.C. § 5705(a) deems records and documents created as part of a medical quality-assurance program as confidential and privileged, and prohibits their disclosure, with limited exceptions, listed at 5 U.S.C. § 5705(b), none of which are applicable here. As there is not authority to release the enclosed medical quality-assurance program records, I am denying your request for this information (as indicated on the enclosed documents) under FOIA Exemption 3, in conjunction with 5 U.S.C. § 5705 (b)(3)

Lastly, I also have determined the records contain information which is protected under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). Therefore, I am withholding portions of documents (as indicated on the enclosed documents) under FOIA Exemption 5.

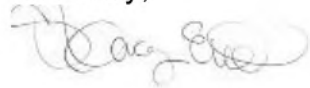
FOIA Exemption 5 provides that an agency need not disclose "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency." Thus, Exemption 5 shields agency-created records that would be protected from civil discovery by a recognized evidentiary or discovery privilege.

Accordingly, Exemption 5 includes the deliberative-process privilege. That privilege covers documents reflecting advisory opinions, recommendations, and deliberations that comprise part of a process by which governmental decisions and policies are formulated. Stated more concretely, the deliberative-process privilege exempts an agency document from disclosure under FOIA if the information it contains is both predecisional and deliberative.

My review of the documents identified as responsive to your FOIA request reveals that they contain information that falls within the protection of Exemption 5. The opinions, recommendations, and deliberations within the enclosed documents marked with Exemption 5 redactions are predecisional, as they were expressed in advance of their relevant agency decisions. Furthermore, the redacted portions are deliberative because they contain the unadopted opinions of VA personnel participating in the decision making process. Release of this information would cause injury to the deliberative process, as the release of the predecisional document to the public would negatively impact frank discussion on matters of policy between agency personnel. Consequently, VA denies your request for this information under FOIA Exemption 5, 5 U.S.C. § 552(b)(5).

Thank you for your interest in VA. If you have any further questions, please feel free to contact me at (785) 230-8430 or via email at [stacy.ekis@va.gov](mailto:stacy.ekis@va.gov).

Sincerely,



Stacy Ekis  
VHA FOIA Officer

Enclosures: